

E-Filed 4/18/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PATRICIA FAGUNDES,

Plaintiff,

v.

CHARTER BUILDERS, INC., a Texas
Corporation doing business in California as
CALCHART CONSTRUCTORS, INC., HELLER-
MANUS, INC. a California Professional
Corporation, and DOMIZILE HOMEOWNERS
ASSOCIATION, a California non-profit
corporation ,

Defendants.

Case Number C 07-1111

ORDER¹ FIXING AMOUNT OF
SANCTIONS

[re: docket no. 108]

On January 30, 2008, the Court dismissed Plaintiff's first amended complaint and imposed sanctions against Plaintiff's counsel pursuant to 28 U.S.C. § 1927, ordering counsel to pay that portion of Defendant's² attorney's fees and costs related to Defendant's motion to

¹ This disposition is not designated for publication and may not be cited.

² This order relates only to Defendant Domizile Homeowners Association.

1 dismiss Plaintiff's FHA claim.³ The sanctions were based on counsel's earlier failure to submit
2 an administrative complaint that Plaintiff had filed with the United States Department of Housing
3 and Urban Development. Defendant has submitted an itemization of fees and costs. Plaintiff has
4 filed a response arguing that the amounts claimed are excessive.

5 Defendant's itemization includes attorney's fees and costs incurred in connection with
6 efforts to dismiss both the original and the amended complaint. Plaintiff's counsel argues that
7 Defendant is not entitled to fees and costs relating to the dismissal of the original complaint.
8 Counsel is correct.⁴ Accordingly, \$11,665.80 in fees and \$4,598.85 in costs, which were incurred
9 in litigating the original complaint, will be excluded.⁵

10 Plaintiff's counsel also argues that Defendant is not entitled to compensation for travel
11 time and online research costs. Because counsel does not cite any controlling authority for this
12 argument, and because the Court finds Defendant's claim as a whole to be reasonable, these
13 amounts will not be excluded. Finally, Plaintiff's counsel challenges Defendant's estimate that
14 one-third of the time spent on the motion to dismiss the amended complaint was related to the
15 FHA claim. Instead, based on the number of pages in Defendant's motion relating to that claim,
16 Plaintiff argues that 22.9% should be fixed as the relevant percentage. Because Defendant's
17 counsel is in a better position to estimate the allocation of his time, and because counsel's
18 estimate is not unreasonable, the Court will accept Defendant's estimate.

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20 ³ Plaintiff's counsel moved for leave to file a motion for reconsideration of the Court's
21 order imposing sanctions. The Court denied that request on February 22, 2008.

22 ⁴ The Court's order dated January 29, 2008 stated, "counsel will be ordered to pay a
23 portion of Defendant's attorney's fees for the litigation of the instant motion." January 29, 2008
Order at 7.

24 ⁵ Plaintiff's counsel also challenges Defendant's entitlement to fees and costs incurred on
25 November 28, 2007, November 30, 2007 and December 5, 2007, on the ground that these entries
26 are unrelated to the FHA claim. Defendant's entries do not delineate which amounts were
27 specifically related to the FHA issue. Instead, the entries, including those focused on by
28 Plaintiff's counsel, describe general tasks relating to the motion to dismiss the amended
complaint. Defendant has provided the Court with a reasonable estimate of the percentage of
time spent on the FHA issue. Accordingly, the challenged entries will not be excluded from the
fee calculation.

1 Based on the foregoing, the Court hereby awards sanctions in the amount of Defendant
2 \$2,575.50 for attorney's fees and \$328.21 for costs. Plaintiff's counsel shall pay these amounts
3 within thirty (30) days of the date of the order.

4 IT IS SO ORDERED.

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7 DATED: April 18, 2008

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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